United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: May 19, 1998

TO : James S. Scott, Regional Director
Region 32

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: TIMEC, Inc.
Case 32-CA-16513-1

524-0133-7500
524-0167-1033
524-5012-4000
524-5012-7000

This "salting" case was submitted for advice as to the lawfulness of the Employer's facially neutral hiring policy, which disqualifies from employment applicants who previously earned more than 50% above the pay for the jobs for which they had applied.

We agree with the Region that a Section 8(a)(3) and (1) complaint should issue, absent settlement, on the theories that: (1) the Employer's hiring policy was promulgated and applied to discriminate against Union applicants, and (2) the policy is inherently destructive of employees' Section 7 rights.

Evidence supporting the first theory includes the Employer's animus as demonstrated in a prior case alleging that the Employer had refused to consider Union salts for hire (Case 32-CA-15241). That case was settled by a non-Board settlement pursuant to which the Employer agreed to consider the salts for employment. The Employer promulgated its new rule only two weeks after the end of the application and consideration period for those salts. The policy was also promulgated shortly before the Employer began hiring for two large projects, i.e., at a time when it knew that it would have to hire additional employees.

The second theory of violation is that set forth in Contractors Labor Pool, Cases 19-CA-23957 et al., Advice Memorandum dated March 19, 1996, at pp. 9-11, and adopted by the ALJD in that case (JD(SF)-73-97, September 3, 1997), at pp. 58-61.[1] The effect of the Employer's 50% rule is to

[1] These cases are now pending before the Board on exceptions.

exclude from employment by the Employer applicants who have previously worked on unionized jobs where they received higher wages. The rule is thus inherently destructive of employee rights to engage in Section 7 activities by, inter alia, working for unionized employers. The Employer concedes that, unlike the employer in Contractors Labor Pool, it never engaged in any statistical studies or analysis to develop its rule.[2] The Employer merely asserts that its new Director of Human Resources relied on his prior and unspecified experience to conclude that high wage employees have high turnover rates when they are employed in lower wage jobs. Thus, the Employer has not shown that it had a legitimate business justification for the 50% rule that would outweigh the adverse impact of the rule on employees' Section 7 rights.

Accordingly, complaint should issue, absent settlement.[3]

B.J.K.

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[2] The ALJ in Contractors Labor Pool found, slip op. at 61, that the employer had not substantiated its study or its claim that its experience in implementing the rule showed its validity as a business tool.

[3] [*FOIA Exemption 5*

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